IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.535 OF 1994

M/s. Kazam Bunaris Electronics
Pvt. Ltd. ...Petitioners.

V/s

1. Municipal Corporation of
Gr. Bombay & anr. ...Respondents.

None for the petitioners.

Mr. Vinod Mahadik for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE : 30th August, 2005.

P.C.

1. None for the petitioners. Mr. Vinod Mahadik, the learned advocate appears for respondent - Corporation.

2. By the present Petition, the petitioners are seeking relief in the nature of declaration that the respondents' demand to pay octroi duty on the notional amount of customs duty inspite of the petitioners

being exempted under 100% Export Oriented Unit Scheme, to be illegal and for further declaration that the respondents' decision to add notional amount of customs duty to the CIF value of goods to arrive at assessable value of imported goods for octroi purposes is also illegal.

3. When the rule was issued on 03/03/1994 interim relief was granted to the petitioners in terms of prayer clause (c) on the following terms and conditions:-

"(i) The Petitioners shall execute a bond in favour of the Bombay Municipal Corporation for the disputed amount of octroi duty.

(ii) The Petitioners give undertaking to the Court that in the event of the petition failing, the Petitioners shall pay to the Respondents the disputed amount of octroi duty within a period of 30 days of the date of the judgment and order together with interest at such rate as may be determined by the Court.

(iii) The Petitioners will furnish to the Municipal Corporation necessary documentary

evidence in respect of the export obligation complied with by the petitioners from time to time in respect of the imported goods such intimation to be furnished within four weeks of the date of compliance with export obligation. The Petitioners shall also duly inform the Respondents in the event of the bond and/or letter of undertaking being invoked by the customs authorities and/or Government of India within a period of 4 weeks of its invocation.

4. Undoubtedly, therefore, at the time of issuance of rule, in terms of interim relief certain advantages were availed by the petitioners. When the matter is called out today, none has appeared on behalf of the petitioners.

5. In the circumstances, Petition is liable to be dismissed for default while vacating the interim relief which was granted on 03/03/1994 and further allowing the respondent - Corporation to enforce the bond and to recover the duty as was payable but for the interim relief. The respondent would be entitiled to recover interest at the rate of 6% p.a. on the duty amount due and payable, but for the interim

order, from the date the duty had become due and payable till the date of actual payment.

6. In the result, therefore, the Petition is dismissed for default. Interim relief stands vacated. The respondent - Corporation is at liberty to recover the duty amount and the interest thereon which could not be recovered on account of the interim relief.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)